

Shawn Ridgell (State Bar No. 201179)
RIDGELL & LAWLOR LLP
2128 Broadway
Oakland, Ca 94612
(510) 986-1300

Attorneys for Plaintiff JOHN ALLEN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ALLEN

Plaintiff,

v.

HOMEQ SERVICING INC.,
DOES 1 TO 50,

Defendant.

ACTION NO: C-08-1698 MMC

**[PROPOSED] ORDER DENYING
DEFENDANT'S MOTION TO
DISMISS [FRCP 12(b)(6)]**

Date: May 23, 2008

Time: 9:00 a.m.

**Location: Courtroom 7, 19th Floor
450 Golden Gate Ave.
San Francisco, CA 94102**

The Motion to Dismiss of plaintiff JOHN ALLEN'S first amended complaint, came regularly for hearing on May 23, 2008. Shawn Ridgell appeared as counsel for the plaintiff, and Jeffrey S. Allison appeared as counsel for the defendant. The court, having considered the moving and supporting papers, and good cause appearing therefor,

IT IS ORDERED that:

1. Defendant's motion to dismiss with respect to plaintiff's first cause of action for negligent interference with prospective economic advantage is DENIED. A sufficient cause of action has been established. See North American Chemical Co. v. Superior Court (1997) 59 Cal. App. 4th 764, 786 69 Cal. Rptr. 2d 466. Plaintiff have satisfied the elements listed in order to establish a cause of action.

1 2. Defendant's motion to dismiss with respect to plaintiff's second cause of action for
2 violation of the Fair Credit Billing Act is DENIED. A sufficient cause of action has
3 been established. A party has a cause of action against under 15 U.S.C. §§1637(b),
4 1666(b)(6) and 1666a when the creditor reports to a credit bureau that an account is
5 delinquent after the account has been paid in full, and when the creditor fails to send
6 a periodic statement to the consumer. Sanders v. Ameritrust of Cincinnati (S.D. Ohio
7 1984) 587 F. Supp. 896, 899. Here, plaintiff alleges that his loan with defendant was
8 paid in full before defendant reported the loan as delinquent. Plaintiff further alleges
9 that defendant failed to send billing statements to him. Although plaintiff asserts an
10 incorrect legal theory in the first amended complaint, he has alleged sufficient facts to
11 state a cause of action under 15 U.S.C. §§1637(b), 1666(b)(6) and 1666a.

12 Defendant has 10 days from the date of this Order to file and serve an Answer
13 to the first amended complaint.

14 Dated:

15
16 Hon. Maxine Chesney
U.S. District Court Judge
17
18
19
20
21
22
23
24
25
26
27
28